

Message Text

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O R 262023Z JAN 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 5083
INFO USMISSION USBERLIN
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION NATO BRUSSELS
USMISSION EC BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 04 BONN 01547

E.O. 11652: GDS
TAGS: PFOR PGOV EEC WB GW US UK FR UR
SUBJECT: BERLIN AND THE EC: SOVIET PROTEST OF
NOVEMBER 16

REFS: (A) BONN 834; (B) BONN 571; (C) BONN 412;
(D) 76 STATE 309627; (E) 76 BONN 21268;
(F) 76 MOSCOW 18075; (G) BONN 738

BEGIN SUMMARY. THE BONN GROUP HAS REDRAFTED THE
PROPOSED ALLIED REPLY TO THE NOVEMBER 16 SOVIET PROTEST
ON THE REPRESENTATION OF BERLIN IN THE EUROPEAN
PARLIAMENT, IN AN EFFORT TO MEET THE BRITISH DESIRE TO
PROVIDE A FULLER ANSWER TO THE SOVIET CLAIM THAT THE
ALLIES DID NOT HAVE THE AUTHORITY TO LEGALIZE THE
EXTENSION OF THE EC TREATIES TO BERLIN WITHOUT SOVIET
ASSENT. THE FRENCH REP, WHILE AGREEING TO THE
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ARGUMENTATION IN THE REVISED DRAFT, BELIEVES
THAT IT SHOULD NOT BE USED IN THIS PARTICULAR REPLY
BUT SHOULD BE RESERVED FOR ONE WHERE LESS IS AT
STAKE THAN BERLIN'S RELATIONSHIP TO THE EC. DEPENDING
ON PARIS' REACTION THERE MAY THUS BE FURTHER DELAYS
BEFORE THE BRITISH AND FRENCH VIEWS ARE RECONCILED.
ACTION REQUESTED: DEPARTMENT'S INSTRUCTIONS CONCERNING

THE REVISED TEXT REPORTED BELOW. END SUMMARY.

1. AT THE JANUARY 26 BONN GROUP MEETING, THE UK REP (HITCH) TABLED A REVISED DRAFT RESPONSE TO THE SOVIET PROTEST OF NOVEMBER 16 (REF F) CONCERNING THE CONTINUED PARTICIPATION OF BERLINERS IN THE EUROPEAN PARLIAMENT. THE BRITISH DRAFT WOULD REPLACE THE AD REF TEXT PREVIOUSLY AGREED IN THE BONN GROUP (REF E AS AMENDED BY REF C), WHICH HAD BEEN APPROVED BY THE DEPARTMENT (REF D) AND BY PARIS.

2. IN INTRODUCING THE NEW DRAFT, HITCH STATED THAT LONDON THOUGHT IT DID NOT ADEQUATELY DEAL WITH A POINT CENTRAL TO THE WHOLE ARGUMENT IN THE SOVIET PROTEST: THAT THE SOVIETS HAD NEVER RECOGNIZED THE EXTENSION OF THE EC TREATIES TO BERLIN AND THAT THE QA DID NOT RETROACTIVELY SANCTION THE APPLICATION OF THE TREATIES TO BERLIN. HIBBERT THOUGHT THAT, IF THE ALLIES AND THE FRG HAD NOW MOVED AWAY FROM THE IDEA OF FIGHTING THE EC BATTLE WITH THE SOVIETS ON THE EC/CEMA FRONT, RATHER THAN ON THE EUROPEAN PARLIAMENT ISSUE, WE SHOULD GO BACK TO THE IDEA OF A LONGER DRAFT REPLY WHICH WOULD PROVIDE FULL ANSWERS TO THE SOVIET ARGUMENTATION.

3. AS PREDICTED LAST YEAR (76 BONN 15645), LONDON ALSO REVIVED ITS PREFERENCE FOR INCLUDING THE ARGUMENTATION THAT BERLIN'S INCLUSION IN THE EC WAS A PART OF THE "EXISTING SITUATION" AT THE TIME OF
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SIGNATURE OF THE QA.

4. AS IN THE DRAFT REPLIES ON WHICH THE BONN GROUP HAD BEEN WORKING LAST NOVEMBER, THE NEW BRITISH DRAFT ATTEMPTS TO ANSWER THE ARGUMENT THAT THE SOVIETS HAD NEVER APPROVED THE EXTENSION OF THE EC TREATIES (AND THAT THE "AGREEMENTS" ON WHICH ALLIED RIGHTS AND RESPONSIBILITIES WERE BASED DID NOT GIVE THE ALLIES THE POWER TO APPROVE SUCH "ILLEGAL" ACTS BY THE FRG) BY FIRST EXPLAINING THE ORIGIN OF ALLIED RIGHTS AND RESPONSIBILITIES. THE FRENCH REP (BOISSIEU) ARGUED AGAINST INCLUSION OF FULL ARGUMENTATION ON THIS POINT IN THE ALLIED REPLY. HE THOUGHT THAT THE IMPORTANCE OF THE EC ISSUE TO BERLIN MADE IT PREFERABLE JUST TO STATE CATEGORICALLY THAT THE ALLIES HAD APPROVED THE EXTENSION OF THE EC TREATIES TO BERLIN AND TO AVOID GETTING INTO A FULL DISCUSSION OF OTHER ASPECTS OF THE BERLIN SITUATION.

5. BOTH THE FRG AND THE US REPS SUPPORTED THE

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O R 262023Z JAN 77
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BRITISH PREFERENCE FOR FACING THE ISSUE NOW. HITCH AND
HENZE (FRG) SUPPORTED THE VIEW OF THE US REP (ALONG
THE LINES OF PARAS 6-10 OF REF A) THAT THE
RECURRING SOVIET LINE ON THE LIMITATIONS OF
ALLIED RIGHTS WOULD SOON HAVE TO BE ANSWERED AND THAT
IT SEEMED PREFERABLE TO DO SO IN THE FIRST INSTANCE
IN A CONFIDENTIAL EXCHANGE.

6. TO BOISSIEU'S ARGUMENT THAT WE NEED ONLY TO REFER
TO THE ALLIED PROTEST DELIVERED IN MOSCOW ON
JANUARY 11 IN CONNECTION WITH RECENT GDR MEASURES,
US REP POINTED OUT THAT THAT PROTEST HAD DEALT ONLY
WITH THE STATUS OF BERLIN. IT DID NOT DEAL ADEQUATELY
WITH THE SPECIFIC QUESTION OF THE ORIGIN AND EXTENT
OF ALLIED RIGHTS.

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7. BOISSIEU ADMITTED THAT IT WOULD BE NECESSARY AT SOME POINT TO MEET THE SOVIET ARGUMENT HEAD ON, BUT HE STUCK BY HIS PREFERENCE FOR DOING SO IN SOME CONTEXT OTHER THAN THE EC PROTEST. HE STATED THAT HE WOULD HAVE NO OBJECTION AT ALL, FOR EXAMPLE, TO RECOMMENDING THAT THE POINT BE ANSWERED IN THE REPLY TO THE RECENT SOVIET PROTEST IN THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION (REFS A AND G).

8. ON THAT BASIS, THE BONN GROUP REACHED AGREEMENT ON A NEW TEXT FOR THE RESPONSE TO THE NOVEMBER 16 DEMARCHE, WITH THE UNDERSTANDING THAT THE FRENCH REP'S CONCURRENCE IN PARAS B AND C OF THE DRAFT (REPORTED BELOW) WAS LIMITED TO CONTENT AND NOT TO USAGE IN THIS PARTICULAR RESPONSE. IT WAS AGREED TO PUT THE ISSUE TO CAPITALS ON THE BASIS THAT THE UK, US AND FRG REPS BELIEVE THOSE TWO PARAGRAPHS SHOULD BE INCLUDED IN THE CONFIDENTIAL EC REPLY AND THE FRENCH REP BELIEVES THEY SHOULD BE USED IN THE REPLY TO BE CIRCULATED IN IMCO.

9. THE FRENCH REP RESTATED HIS OPPOSITION TO REFERENCE TO THE "EXISTING SITUATION" AND TOOK RESERVATIONS TO THE FINAL CLAUSE OF PARA D ("AND THAT THIS FORMED PART OF THE EXISTING SITUATION"). US REP RECALLED THE DEPARTMENT'S PREVIOUS POSITION ON THIS POINT AND TOOK RESERVATIONS TO THE SAME PASSAGE.

10. FOLLOWING IS THE TEXT OF THE REVISED BONN GROUP DRAFT REPLY.

BEGIN TEXT

A. THE GOVERNMENT OF (BLANK), IN CONSULTATION
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WITH THE GOVERNMENTS OF (BLANK), HAS CAREFULLY CONSIDERED THE STATEMENT OF THE MINISTRY OF FOREIGN AFFAIRS OF THE USSR OF 16 NOVEMBER 1976 AND HAS INSTRUCTED ME TO STATE THE FOLLOWING.

B. THE SOVIET STATEMENT OF 16 NOVEMBER 1976 RAISES ISSUES WHICH CONCERN THE ORIGIN OF ALLIED RIGHTS AND RESPONSIBILITIES IN BERLIN. THE (BLANK)

GOVERNMENT RECALLS THAT THOSE RIGHTS AND RESPONSIBILITIES FIND THEIR ORIGIN IN THE TOTAL DEFEAT OF THE THIRD REICH AND THE SUBSEQUENT ASSUMPTION OF SUPREME AUTHORITY IN GERMANY BY THE FOUR POWERS. THE (BLANK) GOVERNMENT HAS SCRUPULOUSLY OBSERVED THE QUADRIPARTITE AGREEMENTS AND DECISIONS WHICH WERE MADE ON THE BASIS OF THOSE ORIGINAL RIGHTS AND RESPONSIBILITIES, INCLUDING THOSE AGREEMENTS AND DECISIONS CONCERNING BERLIN.

C. THE SOVIET STATEMENT ALSO QUESTIONED THE EXTENT OF THESE ALLIED RIGHTS AND RESPONSIBILITIES. ANY OF THE FOUR GOVERNMENTS IS OF COURSE ENTITLED TO LOOK TO ANY OF THE OTHER THREE TO ENSURE THAT QUADRIPARTITE AGREEMENTS AND DECISIONS RELATING TO THE CITY AS A WHOLE ARE NOT VIOLATED. FOR THEIR PART THE THREE POWERS HAVE ALWAYS ENSURED AND WILL CONTINUE TO ENSURE THAT DEVELOPMENTS IN THE WSB ARE CONSISTENT WITH SUCH QUADRIPARTITE AGREEMENTS AND DECISIONS. HOWEVER IT IS FOR THE ALLIED KOMMANDATURA TO DETERMINE AUTHORITATIVELY WHETHER ANY PARTICULAR DEVELOPMENT IN THE WSB AFFECTS THE STATUS OF THE CITY AS A WHOLE AND, WHERE APPROPRIATE, TO TAKE THE NECESSARY MEASURES TO ENSURE THAT THIS STATUS IS NOT AFFECTED THEREBY. WHEN THE AK, ACTING IN THE EXERCISE OF THE SUPREME AUTHORITY WHICH THE US, UK, AND FRANCE ALONE HOLD IN

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EB-08 USIE-00 INRE-00 NSCE-00 SSO-00 COME-00 IO-13
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O R 262023Z JAN 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 5085
INFO USMISSION USBERLIN
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USMISSION EC BRUSSELS

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THE WSB, HAS DECIDED THAT A PARTICULAR DEVELOPMENT IN THOSE SECTORS IS IN FULL CONFORMITY WITH THE STATUS OF THE CITY, THE LEGALITY OF ITS DECISION CANNOT BE QUESTIONED.

D. THE (BLANK) GOVERNMENT RECALLS THAT, WHEN THE AUTHORITIES OF THE THREE POWERS APPROVED THE EXTENSION TO THE WSB OF THE TREATY OF 1957 AND OF OTHER EC CONSTITUTIVE TREATIES, THE ALLIED KOMMANDATURA, IN CONFORMITY WITH THE ESTABLISHED PROCEDURES, TOOK THE NECESSARY STEPS TO ENSURE THAT THEIR APPLICATION IN THE WSB DID NOT AFFECT ALLIED RIGHTS AND RESPONSIBILITIES, INCLUDING THOSE WHICH CONCERN MATTERS OF SECURITY AND STATUS. THE APPLICATION OF THESE TREATIES IN THE WSB UNDER THESE CONDITIONS IS IN NO WAY CONFIDENTIAL

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INCOMPATIBLE WITH THE STATUS OF BERLIN AND IT IS ERRONEOUS TO DESCRIBE IT AS ILLEGAL. THEREFORE, THE QUESTION OF WHETHER THE QA RETROACTIVELY SANCTIONED THE EXTENSION OF THESE TREATIES TO THE WSB DOES NOT ARISE. THE FACT IS THAT THE QA IN NO WAY AFFECTED THE LEGALITY OF THE APPLICATION OF THESE TREATIES TO THE WSB. FURTHERMORE, IT WAS WELL KNOWN TO THE FOUR SIGNATORIES OF THE QA AT THE TIME OF ITS NEGOTIATION AND CONCLUSION THAT THE WSB WERE INCLUDED IN THE AREA OF APPLICATION OF THE EC TREATIES AND THAT THIS FORMED PART OF THE EXISTING SITUATION.

E. TO THE EXTENT THAT THE SOVIET STATEMENT CONCERNS THE PROPOSED EXTENSION TO THE WSB OF THE COUNCIL ACT OF 20 SEPTEMBER 1976 CONCERNING THE ELECTION OF REPRESENTATIVES OF THE EUROPEAN ASSEMBLY BY DIRECT UNIVERSAL SUFFRAGE, THE (BLANK) GOVERNMENT RECALLS AND CONFIRMS THE TERMS OF ITS COMMUNICATION OF 20 SEPTEMBER 1976. THE GOVERNMENTS OF FRANCE, THE UNITED STATES AND THE UNITED KINGDOM HAVE GIVEN THEIR AGREEMENT TO THE EXTENSION TO BERLIN OF THE COUNCIL ACT OF 20 SEPTEMBER 1976; THEY HAVE TAKEN THE NECESSARY MEASURES, DESCRIBED IN THEIR STATEMENT OF 20 SEPTEMBER 1976, TO ENSURE THAT THE PROVISIONS OF THAT ACT DO NOT AFFECT THE STATUS OF THE CITY. THEY CONFIRM THAT THE CONTINUED PARTICIPATION OF REPRESENTATIVES FROM BERLIN IN THE EUROPEAN ASSEMBLY CANNOT, IN SUCH CIRCUMSTANCES,

CONSTITUTE A VIOLATION OF THE QUADRIPARTITE AGREEMENT
OF 3 SEPTEMBER 1971.

F. THE WESTERN SECTORS OF BERLIN WILL CONTINUE TO
BE INCLUDED IN THE AREA OF APPLICATION OF THE CON-
STITUTIVE TREATIES OF THE EC INsofar AS THIS IS
COMPATIBLE WITH ALLIED RIGHTS AND RESPONSIBILITIES.
SUCH INCLUSION CANNOT AND WILL NOT HAVE THE EFFECT OF
CONFERRING ON THE EUROPEAN COMMUNITY ANY PART OF THE
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SUPREME AUTHORITY EXERCISED BY THE THREE POWERS IN THE
WESTERN SECTORS OF BERLIN. SUCH INCLUSION CONTRIBUTES
TO THE MAINTENANCE AND DEVELOPMENT OF THE TIES BETWEEN
THE WESTERN SECTORS OF BERLIN AND THE FEDERAL
REPUBLIC OF GERMANY, AS CONFIRMED IN THE QA, AND DOES
NOT CIRCUMVENT THE SECOND PART OF THE RELEVANT
PROVISION OF THE QA THAT THESE SECTORS CONTINUE NOT TO
BE A CONSTITUENT PART OF THE FEDERAL REPUBLIC OF
GERMANY AND NOT TO BE GOVERNED BY IT.

G. THE (BLANK) GOVERNMENT CONSIDERS IT
UNNECESSARY TO COMMENT ON HYPOTHESES CONCERNING THE
BUILDING OF A EUROPEAN UNION. ALL EC DEVELOPMENTS WILL
BE REVIEWED BY THE THREE POWERS IN THE EXERCISE OF THEIR
SUPREME AUTHORITY, IN ORDER TO ENSURE THAT NO SUCH
DEVELOPMENT AFFECTS THE STATUS OF BERLIN.

H. AS THE RIGHTS OF THE SOVIET UNION ARE NOT
AFFECTED AND RELEVANT PROVISIONS OF THE QA ARE PROPERLY
OBSERVED, THE GOVERNMENT OF (BLANK) REJECTS
AS TOTALLY UNWARRANTED THE REFERENCE TO PROTECTIVE
ACTIONS CONTAINED IN THE SOVIET STATEMENT.

END TEXT

11. COMMENT: FOR REASONS REPORTED IN REF (A), THE
EMBASSY AGREES WITH THE UK VIEW THAT IT WOULD BE DE-
SIRABLE TO PROVIDE A FULL RESPONSE TO THE SOVIETS ON
THE ARGUMENT THEY ARE USING WITH INCREASING
FREQUENCY THAT THE ALLIES HAVE NO AUTHORITY TO

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EB-08 USIE-00 INRE-00 NSCE-00 SSO-00 COME-00 IO-13
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APPROVE ACTIONS AFFECTING WEST BERLIN TO WHICH THE
SOVIETS OBJECT. WE THEREFORE CONCUR IN THE BRITISH
PREFERENCE FOR AN EXPANDED REPLY ALONG THE LINES OF
THE ABOVE TEXT. WE CONTINUE TO BE CONCERNED ABOUT THE
LONG DELAY IN RESPONDING TO THIS PARTICULAR SOVIET
DEMARCHÉ, PARTICULARLY SINCE IT CONTAINED THREATS OF
SOVIET COUNTERACTIONS WHICH SHOULD HAVE BEEN
REJECTED LONG AGO. WE REALIZE THAT, IF PARIS
SUPPORTS BOISSIEU IN REFUSING TO ACCEPT THE
EXPANDED REPLY, THE ISSUE MAY REQUIRE FURTHER
PROLONGED DEBATE. UNLESS THE DEPARTMENT HAS A STRONG
PREFERENCE FOR ONE VERSION OR THE OTHER, IT COULD
BE HELPFUL TO RESOLVING THE DEBATE IF THE US REP
WERE AUTHORIZED TO SUPPORT EITHER THE SHORTER REPLY
PREVIOUSLY APPROVED (REF D) OR THE LONGER VERSION
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ABOVE.

12. WITH REGARD TO THE EXISTING SITUATION ARGUMENT,
DEPARTMENT WILL RECALL THAT, ALTHOUGH IT WAS DROPPED
FROM THE SEPTEMBER 20 REPLY TO THE AUGUST 3 PROTEST
ON THE EUROPEAN PARLIAMENT, THE ALLIES HAD

PREVIOUSLY USED IT IN RESPONDING TO THE SOVIET PROTEST
ON ESTABLISHMENT OF THE EC VOCATIONAL CENTER IN
BERLIN. FROM THE MANNER IN WHICH HITCH PRESENTED
THAT PORTION OF HIS INSTRUCTIONS, WE HAVE THE
IMPRESSION THAT LONDON WILL NOT HOLD UP THE PRESENT
REPLY INDEFINITELY ON THAT POINT ALONE. HERE AGAIN,
HOWEVER, IT COULD BE HELPFUL TO REACHING EARLY
AGREEMENT IF THE DEPARTMENT, DESPITE THE
POSITION TAKEN IN SEPTEMBER, WHICH THE EMBASSY FULLY
UNDERSTANDS, COULD AUTHORIZE AS A FALLBACK ANOTHER
REFERENCE TO EXISTING SITUATION, AS IN THE CASE OF
THE VOCATIONAL CENTER REPLY.

13. ACTION REQUESTED: REQUEST DEPARTMENT'S
INSTRUCTIONS ON THE ABOVE TEXT.
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Message Attributes

Automatic Decaptioning: X
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